

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARGARITA FRIAS,
Plaintiff,
v.
ANDREW SAUL,
Commissioner of Social Security,
Defendant.

) Case No.: 1:20-cv-0097- JLT
)
) ORDER GRANTING PLAINTIFF'S MOTION
) TO PROCEED IN FORMA PAUPERIS
) (Doc. 2)
)
) ORDER DIRECTING CLERK TO ISSUE
) SUMMONS, SOCIAL SECURITY CASE
) DOCUMENTS, AND SCHEDULING ORDER
)
) ORDER DIRECTING SERVICE OF THE
) COMPLAINT

Margarita Frias seeks to proceed *in forma pauperis* with an action for judicial review of the administrative decision denying an application for Social Security benefits. Pending before the Court are the complaint and the motion to proceed *in forma pauperis*. (Docs. 1, 2) For the following reasons, the Court finds service of the complaint is appropriate.

I. **Proceeding *in forma pauperis***

The Court may authorize the commencement of an action without prepayment of fees “by a person who submits an affidavit that includes a statement of all assets such person . . . possesses [and] that the person is unable to pay such fees or give security therefor.” 28 U.S.C. § 1915(a). The Court reviewed the financial status affidavit (Doc. 2), and finds the requirements of 28 U.S.C. § 1915(a) are satisfied. Therefore, Plaintiff’s request to proceed *in forma pauperis* is **GRANTED**.

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1 **II. Screening Requirement**

2 When an individual seeks to proceed *in forma pauperis*, the Court is required to review the
3 complaint and shall dismiss a complaint, or portion of the complaint, if it is “frivolous, malicious or
4 fails to state a claim upon which relief may be granted; or . . . seeks monetary relief from a defendant
5 who is immune from such relief.” 28 U.S.C. § 1915A(b); 28 U.S.C. § 1915(e)(2). A plaintiff’s claim is
6 frivolous “when the facts alleged rise to the level of the irrational or the wholly incredible, whether or
7 not there are judicially noticeable facts available to contradict them.” *Denton v. Hernandez*, 504 U.S.
8 25, 32-33 (1992).

9 **III. Pleading Standards**

10 General rules for pleading complaints are governed by the Federal Rules of Civil Procedure. A
11 pleading must include a statement affirming the court’s jurisdiction, “a short and plain statement of the
12 claim showing the pleader is entitled to relief; and . . . a demand for the relief sought, which may
13 include relief in the alternative or different types of relief.” Fed. R. Civ. P. 8(a). The purpose of the
14 complaint is to give the defendant fair notice of the claims, and the grounds upon which the complaint
15 stands. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002). The Supreme Court noted,

16 Rule 8 does not require detailed factual allegations, but it demands more than an
17 unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers
18 labels and conclusions or a formulaic recitation of the elements of a cause of action will
 not do. Nor does a complaint suffice if it tenders naked assertions devoid of further
 factual enhancement.

19 *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (internal quotation marks and citations omitted). Vague
20 and conclusory allegations do not support a cause of action. *Ivey v. Board of Regents*, 673 F.2d 266,
21 268 (9th Cir. 1982). The Court clarified further,

22 [A] complaint must contain sufficient factual matter, accepted as true, to “state a claim
23 to relief that is plausible on its face.” [Citation]. A claim has facial plausibility when
24 the plaintiff pleads factual content that allows the court to draw the reasonable
 inference that the defendant is liable for the misconduct alleged. [Citation]. The
25 plausibility standard is not akin to a “probability requirement,” but it asks for more than
 a sheer possibility that a defendant has acted unlawfully. [Citation]. Where a complaint
 pleads facts that are “merely consistent with” a defendant’s liability, it “stops short of
 the line between possibility and plausibility of ‘entitlement to relief.’

27 *Iqbal*, 556 U.S. at 679 (citations omitted). When factual allegations are well-pled, a court should
28 assume their truth and determine whether the facts would make the plaintiff entitled to relief; legal

1 conclusions are not entitled to the same assumption of truth. *Id.* The Court may grant leave to amend a
2 complaint to the extent deficiencies of the complaint can be cured by an amendment. *Lopez v. Smith*,
3 203 F.3d 1122, 1127-28 (9th Cir. 2000) (en banc).

4 **IV. Discussion and Analysis**

5 Plaintiff seeks review of a decision by the Commissioner of Social Security denying disability
6 benefits. (Doc. 1) The Court may have jurisdiction pursuant to 42 U.S.C. § 405(g), which provides:

7 Any individual, after any final decision of the Commissioner made after a hearing to
8 which he was a party, irrespective of the amount in controversy, may obtain a review of
9 such decision by a civil action commenced within sixty days after the mailing to him of
10 such decision or within such further time as the Commissioner may allow. Such action
11 shall be brought in the district court of the United States for the judicial district in
which the plaintiff resides, or has his principal place of business . . . The court shall
have power to enter, upon the pleadings and transcript of the record, a judgment
affirming, modifying, or reversing the decision of the Commissioner of Social Security,
with or without remanding the cause for a rehearing.

12 *Id.* Except as provided by statute, “[n]o findings of fact or decision of the Commissioner shall be
13 reviewed by any person, tribunal, or governmental agency.” 42 U.S.C. § 405(h). The regulations
14 “operate as a statute of limitations setting the time period in which a claimant may appeal a final
15 decision of the Commissioner.” *Berrigan v. Astrue*, 2010 U.S. Dist. LEXIS 115390, at * 4-5 (E.D. Cal.
16 Oct. 29, 2010) (citing *Bowen v. City of New York*, 476 U.S. 467, 479 (1986); *Matthews v. Eldridge*, 424
17 U.S. 319, 328 n. 9 (1976)).

18 Plaintiff alleges the Appeals Council responded to a request for review of the decision denying
19 benefits on November 18, 2019, at which time the decision of the administrative law judge became the
20 final decision of the Commissioner. (Doc. 1 at 1) Therefore, Plaintiff’s request for judicial review was
21 to be filed within sixty-five days, or no later than January 22, 2020. Because Plaintiff initiated this
22 action by filing a complaint on January 20, 2020, the request for judicial review was filed within the
23 time frame directed by 42 U.S.C. § 405(g).

24 **V. Conclusion and Order**

25 Plaintiff’s complaint states a cognizable claim for review of the administrative decision denying
26 Social Security benefits. Based upon the foregoing, the Court **ORDERS**:

- 27 1. Plaintiff’s motion to proceed *in forma pauperis* (Doc. 2) is **GRANTED**;
28 2. The Clerk of Court is **DIRECTED** to issue summons as to Andrew Saul, Commissioner

of Social Security;

3. The Clerk of Court is DIRECTED to issue and serve Plaintiff with Social Security Case Documents, including the Scheduling Order, Order regarding Consent, the Consent Form, and USM-285 Forms; and
 4. The U.S. Marshal is DIRECTED to serve a copy of the complaint, summons, and this order upon the defendant as directed by Plaintiff in the USM Forms.

IT IS SO ORDERED.

Dated: January 30, 2020

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE